

# Intellectual Property High Court of Korea

## Rendering of Judgement





## **Intellectual Property High Court Decision 2023Na1017 rendered on Oct 17, 2023**

### **[Order]**

1. The lower court's decision shall be revoked.
2. The Defendant shall not produce, use, transfer, lend, import, or exhibit the Defendant's Product (Model: Turtle1017).
3. The Defendant shall bear the total cost arising from the lawsuit.
4. Paragraph 2 may be enforced provisionally.



## [Opinion]

- ❖ Unless there are exceptional circumstances, when a patentee, etc., has transferred a patented product to a third party, the patentee's patent right in the product shall be exhausted as having achieved its purpose.
- ❖ However, if the patented product has been processed or modified to the extent that the identity of the original product is lost, it can be evaluated that the patentee's patent rights shall be considered infringed.



- ❖ Here, whether a patented product has been processed or modified to the extent that the identity of the original product is lost, and therefore, the act of producing has taken place shall be decided based on a comprehensive assessment of the description of the patented invention, the objective nature of the product, and the use form, legislative purpose of the Patent Act, etc.



**<1> The description of the patented invention (Roll Paper) is as follows:**

The patented roll paper is exclusively used for article packaging devices. It includes magnets on the core tube, and the magnets are arranged to measure locations by the rotation angle sensor in the article packaging device. This enables the rotation angle of the roll paper itself to be precisely measured and the braking force to be properly adjusted according to the external diameter of the roll paper.



**<2> The objective nature of Plaintiff's patented product is as follows:**

Plaintiff manufactured and sold the Roll Paper on the premise that the core tube of the Roll paper would be used one-time. When the core tube is reused after one-time use of Plaintiff's patented product, it is difficult for ordinary users to remove the core tube. In addition, securing the quality of the core tube of Plaintiff's Roll Paper is difficult. Thus, it is reasonable to conclude that the Plaintiff's patented product has lost its utility after one-time use.



### **<3> Finally, the use form of the product is as follows:**

Plaintiff's patented product is exclusively used in Plaintiff's packaging device, and the packaging sheet part makes up a distinctive portion of the composition of Plaintiff's roll paper. In addition, as examined above, the Plaintiff's patented product loses its utility after it is used up. Therefore, it is reasonable to conclude that replacing the packaging sheet to the plaintiff's core tube cannot be regarded as replacing a consumable component under normal use, but rather as replacing the component that constitutes an essential portion of the invention.



❖ Therefore, Defendant's act infringes Plaintiff's patent rights, and Plaintiff's argument is well grounded. For this reason, the lower court's decision rendered shall be revoked.





**Thank you**